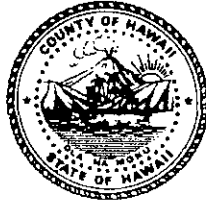


William P. Kenoi
Mayor



BJ Leithead Todd
Director

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PLANNING DEPARTMENT

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December 11, 2012

Lori Mikkelson
All Aina Services
P.O. Box 291
Laupāhoehoe, HI 96764

Dear Ms. Mikkelson:

SUBJECT: VARIANCE DECISION VAR-12-000052
Agent: ALL AINA SERVICES
Applicant: POLESTAR GARDENS, LESSEE
Owner: LORN DOUGLAS TRUST
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply
TMK: 1-4-020:007 (SUB-09-000857)

This will address the water variance request and acknowledge the withdrawal of the roadway improvements variance request.

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-12-000052 subject to variance conditions. The variance grants relief for SUB-09-000857 from constructing minimum County dedicable water supply system improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The referenced TMK property, Lot 2, being portions of Land Commission Awards 4452:3 & 8559:5; containing approximately 20.519 acres, is situated at Halekamahina & Kapoho, Puna, Hawai'i.

2. **Land Use Designations.** The subject property is zoned Agricultural – three (3) acres minimum building site area (A-3a) by the County and designated Agricultural (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** Subdivision application SUB-09-000857 was submitted to subdivide the subject TMK property into 6 lots. The request was subsequently reduced to 4 lots. Further action on the subdivision application has been deferred pursuant to various documents in the subdivision file. The applicant is now again prepared to pursue the application.
4. **Variance Application.** The variance request from water supply improvements (and originally roadway improvements) was acknowledged by Planning Department letter dated April 12, 2012. There were a number of time extensions granted to the processing of the request in order for the subdivider/applicant to pursue alternate access rights. This variance application includes background history and circumstances and information regarding the pending subdivision application.
5. **Variance Application (VAR-12-000052) - Agency Comments and Requirements.**
 - a. The State of Hawai'i-Department of Health (DOH): see attached memorandum dated April 20, 2012.
 - b. The County of Hawai'i Fire Department (HFD): see attached memorandum dated May 1, 2012.
 - c. The Department of Water Supply (DWS): see attached memorandum dated April 25, 2012. They also responded, on April 16, 2009, to the subdivision application (see attached) that water service is available to the proposed six-lot subdivision.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted an affidavit regarding notice of variance application mailed to a list of surrounding property owners and posting of a sign. According to the affidavit dated April 26, 2012 and other submittals in the variance application file, notice of variance was mailed on or about April 26, 2012. An affidavit dated May 23, 2012 states that a sign was posted upon subject TMK property on or about May 23, 2012. A photograph of the posted sign was also submitted.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were solicited and none were received. Written objections to this application were received from several of the surrounding property owners, Herbert G. Dorsey III, Bettie Van Overbeke and Lono Lyman. Their concerns were with the roadway variance portion of the application which is no longer applicable.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Water Supply. The Subdivision Code requires that all new subdivisions have a dedicable water system meeting with the minimum requirements of the DWS. This would involve extending the existing DWS water facilities approximately one (1) mile along the Kapoho-Pāhoa Road.

The intent and purpose of requiring a dedicable water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Variance. The first alternative would be to design, drill and develop private wells and install the necessary dedicable water system improvements in accordance with DWS standards.

The cost to construct additional dedicable water supply improvements in accordance with DWS standards, or an alternative private water system meeting DWS standards for the lots of the pending 4-lot subdivision, would be putting excessive demands upon the applicant when a more reasonable alternative can be allowed pursuant to Planning Department Rule No. 22, Water Variance.

An alternative from meeting the minimum requirements of the DWS is to allow privately-owned individual rainwater catchment systems for up to six-lots within subdivisions. Rule No. 22 identifies, in part, that the variance "...applies to requests for subdivisions that propose to rely on rain catchment for their water supply, on agriculturally zoned properties..." Also, Rule 22-4 Minimum rainfall, "... all lots to be served by catchment shall have an average annual rainfall of not less than 60".

The proposed subdivision is located in an area that receives approximately 80 inches to 120 inches of rainfall annually.

Given that the subject area receives an average of sufficient annual rainfall, a water variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, Rule 22 and the Hawai'i County General Plan.

Therefore, given the circumstances cited by the applicant, the request for a variance from the water supply requirements of the Subdivision Code, at this time, would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, Rule 22 and the County General Plan. Furthermore, it is felt that this variance will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

DETERMINATION - VARIANCE CONDITIONS

The variance requested is to permit the proposed 4-lot subdivision of the subject TMK property without providing a dedicable water system meeting DWS standards is hereby **approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
3. The owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement, shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which is not serviced by a County dedicable public water system. The agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawai'i by the Planning Department at the cost and expense of the owners.

In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no special or unusual circumstances applying to the property which deprive the owners of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the properties, and hence, no grounds exist or will exist for a variance from the Subdivision Code to permit further subdivision of the properties, and that changes in the owners' personal or financial situation after acquiring the properties also will not constitute grounds for a variance from the Subdivision Code to permit further subdivision of the properties.

5. **WATER VARIANCE.**

- a. The owners, grantees, successors, and assigns agree and accept the fact that a County dedicable public water system will not be extended to the lots within proposed subdivision SUB-09-000857.
 - b. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying public water to the proposed lots. No further subdivision of the lots created will be permitted unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.
 - c. No condominium property regime will be allowed on any lot created.
 - d. Any dwelling not served by the County water system constructed on any created lot shall be provided with and maintain a private rainwater catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water storage system shall adhere to the University of Hawai'i's College of Tropical Agriculture and Human Resources' "Guidelines on Rainwater Catchment Systems for Hawai'i" as well as the DOH requirements related to water testing and water purifying devices.
 - e. Each permitted dwelling shall be provided with an additional **minimum** 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, shall be as specified by the HFD in the memorandum attached to this permit for reference. The HFD also advises, as a precautionary measure for other uninhabited agricultural structures, that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.
 - f. In the event that the County notifies the owner(s) of the lot(s) created that the County water system has been upgraded or an improvement district initiated to enable service to these lots, the owner(s) of lot(s) shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the DWS.
6. The pending subdivision application's (SUB-09-000857) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance.
 7. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

Lori Mikkelson
All Aina Services
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Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

JRH: nci

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Encls: Agency Comments

xc: DWS-Engineering Branch
HFD
SUB-09-000857

Bettie L. Van Overbeke and Herbert G. Dorsey III
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Lono Lyman
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w/encls: Lorn Douglas Living Trust c/o Michael Gornik
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Via email: Gilbert Bailado, GIS Section
Larry Brown, Puna CDP